

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JOSEPHINE LINKER HART, JUDGE

DIVISION I

CA06-722

VIKKI DEATON

MARCH 7, 2007

APPELLANT

V.

APPEAL FROM THE COLUMBIA
COUNTY CIRCUIT COURT
[NO. DR 2005-210-3]

JERALD DEATON

HON. EDWIN A. KEATON,
CIRCUIT JUDGE

APPELLEE

AFFIRMED

Vikki Deaton was divorced from Jerald Deaton by a Columbia County Circuit Court decree. She appeals the trial court's decision awarding Jerald an equal portion of the residence that the parties built during the marriage. On appeal, she argues that the trial court erred in finding that the house was marital property. We affirm.

We review traditional equity cases de novo on the record and will not reverse a finding of fact by the trial judge unless it is clearly against the preponderance of the evidence. *Williams v. Williams*, 82 Ark. App. 294, 108 S.W.3d 629 (2003). In reviewing the trial judge's findings, we give due deference to the judge's superior position to determine the credibility of the witnesses and the weight to be accorded to their testimony. *Id.* A finding is clearly erroneous when the reviewing court, on the entire evidence, is left with the definite

and firm conviction that a mistake has been committed. *Skokos v. Skokos*, 344 Ark. 420, 40 S.W.3d 768 (2001). In order to demonstrate that the trial court's ruling was erroneous, an appellant must show that the trial court abused its discretion by making a decision that was arbitrary or groundless. *Id.*

It is not disputed that prior to the divorce the parties, serving as their own general contractor, began construction of the house in question on land that was owned by Vikki's grandmother through a limited partnership. Both parties testified that at the time the construction began, they intended to live in the house as a family, and around that time, Jerald adopted Vikki's child. Likewise, it is undisputed that Vikki sold timber from lands that she acquired prior to the marriage, placed the \$60,701.64 in proceeds in CDs in her name only, subsequently deposited the money into a joint account, and the parties used the money to pay subcontractors working on the house. Both parties also agree that Jerald contributed labor to the construction of the residence, although Vikki claims that some of his workmanship was substandard. Nonetheless, Jerald installed all of the electrical wiring, receptacles, and fixtures, an alarm system, coaxial cable, and the heating and cooling system. The parties agree that Jerald was the only party that worked outside the home during the marriage, although Vikki did receive some stock dividends and oil royalties. According to Jerald, he turned over his entire paycheck to Vikki, who had complete control of the family finances. Jerald also testified that there was an outstanding "note" to Home Depot in the amount of approximately \$17,000 that Vikki paid after the parties separated.

Regarding the finances, Vikki testified that she and Jerald had their own separate checking accounts, plus the joint building account. Vikki conceded at trial that the moment she placed the timber money in the joint account, she believed that half the money belonged to Jerald. Vikki acknowledged that Jerald paid the family's living expenses, but claimed that Jerald cashed his paycheck before giving it to her and kept some of the money for his own uses. She estimated that \$175,000 was spent on construction of the house, but she claimed there was no outstanding indebtedness. Despite acknowledging that Jerald's name was on the deed and that he contributed labor to construct the house, Vikki believed that he had no interest in the realty. Vikki also testified that Jerald's earnings were used to pay for the mortgage on a mobile home that she had owned prior to the marriage.

The trial court found that on May 20, 2002, Vikki's family deeded the realty in question, forty acres in Columbia County, to both the parties. It further found that the funds used to construct the house on the property were Vikki's "separate non-marital property," and Jerald "provided some labor during the construction of the house." The trial court concluded that the real property was marital property and that "the residence was contributed to the marriage as a gift" and awarded Vikki and Jerald an equal interest in the residence.

On appeal, Vikki argues that the trial court's findings were clearly erroneous. She acknowledges that the house was built on land that was "eventually deeded to both parties" but she asserts that this fact is of no consequence because Arkansas law allows for reimbursement for improvements made upon real estate owned by another, and trial courts

have the inherent power to structure a property settlement that would give the other party equivalent value. Vikki also acknowledges that once property is placed in both spouses' names, it creates a strong presumption that the property is held as tenancy by the entirety, and that the presumption may only be overcome by clear and convincing evidence. Nonetheless, she contends that she presented such proof at trial because she testified that she built the house for her and her children forever and there was "no testimony that the house was a gift to the union." Vikki argues that the trial court misapplied *McKay v. McKay*, 340 Ark. 171, 8 S.W.3d 525 (2000), which she contends does not preclude the award of the house to her as nonmarital property. She urges us to find analogous *Jackson v. Jackson*, 298 Ark. 60, 765 S.W.2d 561 (1989), a case which she says stands for the proposition that "mere depositing of nonmarital funds into the parties' bank account did not render them forever owned by the entirety." She claims that in the instant case, she merely deposited her nonmarital funds into a joint checking account "for the sole purpose of facilitating payments to subcontractors constructing the house." Likewise, she contends that *Cole v. Cole*, 53 Ark. App. 140, 920 S.W.2d 32 (1996), supports her argument. Vikki claims the fact that construction of the residence was begun while the property was still owned by a family trust "speaks volumes about the intent of all parties involved regarding the house." She asserts, as she did at trial, that the land was only conveyed to the parties because it was "required for insurance purposes." We disagree.

As noted previously, Vikki herself acknowledged at trial that when she deposited the timber money in the joint account, half the money belonged to Jerald. Furthermore, both parties regarded the construction of the house as a joint effort, with both intending to reside there permanently. Jerald stated that he worked on the dwelling because he believed the house was a marital possession. The uncontested value placed on the house was \$175,000, which, of course, eclipses the approximately \$60,000 contribution that Vikki made to the joint venture. Accordingly, the majority of the dwelling's value had to come from a combination of Jerald's labor and other funds that were not identified as non-marital. Under these circumstances, we hold that the trial court did not clearly err in finding that Vikki had made a gift of the non-marital funds to the union.

Furthermore, Vikki's reliance on *Jackson*, *Cole*, and *McKay* does not compel a different result. In each of the cases the trial court found that there was sufficient evidence to overcome the presumption that the funds were marital, and the appellate courts *affirmed* those findings. Accordingly, these cases do not require us to *reverse* a trial court. Moreover, in each of the cases, there was much stronger evidence that the parties intended to keep the nonmarital funds separate.

In *Jackson*, the trial court found, and the supreme court agreed, that depositing non-marital funds from a stock account into a joint checking account for the sole purpose of writing a check to purchase non-marital property did not render the purchase marital property. Significantly, at the time that the appellee in *Jackson* made these transactions, she

was experiencing marital difficulties. Conversely, in the instant case, when Vikki undertook her transaction marital difficulties were not an issue and both parties contemplated making the newly constructed home their residence forever.

Likewise, while *Cole* appears to have superficial similarity to the case at bar in that it involved a home purchased with funds from a bank account funded with money acquired from non-marital property on which the non-contributing spouse's name was placed, it is clearly distinguishable. In *Cole*, there was testimony that the non-contributing spouse only wrote "four or five checks on the account and only with her permission," 53 Ark. App. at 143, 920 S.W.2d at 34, and otherwise the claiming spouse scrupulously segregated transactions associated with the account from the general expenses that arise during a marriage. *Id.* In the instant case, Vikki acknowledged that when she deposited the timber money in the joint checking account, Jerald had an equal interest in the money.

Similarly, in *McKay*, the supreme court affirmed the trial court's credibility determination regarding how the parties treated a contested account, funded solely from non-marital sources. There, the prevailing party had asserted that the non-contributing spouse, who maintained her own account funded with her earnings, only accessed the contested account when he gave her express permission. Nowhere in the testimony can we find such strict control exerted by Vikki over the construction account.

Accordingly, we hold that the trial court did not err in refusing to award the house to Vikki.¹

Affirmed.

Pittman, C.J., and BIRD, J., agree.

¹ We could also have affirmed the trial court's disposition of the residence because the realty was held as a tenancy by the entirety, and awarding it to Vikki would have violated Arkansas Code Annotated section 9-12-317 (Repl. 2003). *Bradford v. Bradford*, 34 Ark. App. 247, 808 S.W.2d 794 (1991).